

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of

Intelsat License LLC
f/k/a Intelsat North America, LLC

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File No.: EB-IHD-15-00018207¹
Acct. No.: 201432080001
FRN: 0009308008

ORDER

Adopted: October 21, 2015

Released: October 21, 2015

By the Chief, Enforcement Bureau:

1. The Enforcement Bureau (Bureau) of the Federal Communications Commission has entered into a Consent Decree to resolve its investigation into whether Intelsat License LLC, f/k/a Intelsat North America, LLC (Intelsat) improperly allowed another entity to take its place in a queue established for reviewing applications for satellite authorizations. Because applications are reviewed on a first come first served basis, prohibiting the assignment of places in the queue helps prevent entities from engaging in speculation by filing applications for the purpose of selling their priority positions in the queue. To settle this matter, Intelsat will implement a compliance plan and will pay a \$12,000 civil penalty.

2. After reviewing the terms of the Consent Decree and evaluating the facts before us, we find that the public interest would be served by adopting the Consent Decree and resolving the Notice of Apparent Liability for Forfeiture (NAL) regarding Intelsat's compliance with the rule prohibiting an applicant for a satellite authorization's assignment of its place in the queue to another entity, Section 25.158(c) of the Rules.²

3. In the absence of material new evidence relating to this matter, we do not set for hearing the question of Intelsat's basic qualifications to hold or obtain any Commission license or authorization.³

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 503(b) of the Act⁴ and the authority delegated by Sections 0.111 and 0.311 of the Rules,⁵ the attached Consent Decree **IS ADOPTED** and its terms incorporated by reference.

5. **IT IS FURTHER ORDERED** that the above-captioned matter **IS TERMINATED** and the NAL **IS CANCELED**.

¹ This case was formerly assigned File No. EB-11-IH-1376.

² 47 C.F.R. § 25.158(c).

³ See 47 C.F.R. § 1.93(b).

⁴ 47 U.S.C. §§ 154(i), 503(b).

⁵ 47 C.F.R §§ 0.111, 0.311.

6. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by first class mail and certified mail, return receipt requested, to Jennifer D. Hindin, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, DC 20006, and to Joshua Turner, Esq., Wiley Rein LLP, 1776 K Street, N.W., Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of

Intelsat License LLC
f/k/a Intelsat North America, LLC

File No.: EB-IHD-15-00018207⁶
NAL/Acct. No.: 201432080001
FRN: 0009308008

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission and Intelsat License LLC, f/k/a Intelsat North America, LLC, by their authorized representatives, hereby enter into this Consent Decree for the purpose of terminating the Enforcement Bureau's investigation into whether Intelsat violated Section 25.158(c) of the Commission's rules in connection with its transfer of its place in the queue for GSO-like satellite license applicants, and its interactions with the Commission thereafter.

I. DEFINITIONS

2. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) "Act" means the Communications Act of 1934, as amended.⁷
 - (b) "Adopting Order" means an order of the Bureau adopting the terms of this Consent Decree without change, addition, deletion, or modification.
 - (c) "Bureau" means the Enforcement Bureau of the Federal Communications Commission.
 - (d) "Commission" and "FCC" mean the Federal Communications Commission and all of its bureaus and offices.
 - (e) "Communications Laws" means collectively, the Act, the Rules, and the published and promulgated orders and decisions of the Commission to which Intelsat is subject by virtue of its business activities, including but not limited to the Satellite Queue Transfer Rule.
 - (f) "Compliance Plan" means the compliance obligations, program, and procedures described in this Consent Decree at paragraph 13.
 - (g) "Covered Employees" means all employees and agents of Intelsat who perform, or supervise, oversee, or manage the performance of, duties that relate to Intelsat's responsibilities under the Satellite Queue Transfer Rule.
 - (h) "Effective Date" means the date by which both the Bureau and Intelsat have signed the Consent Decree.
 - (i) "Intelsat" or "Company" means Intelsat License LLC, f/k/a Intelsat North America, LLC and its affiliates, subsidiaries, predecessors-in-interest, and successors-in-interest.

⁶ This case was formerly assigned File No. EB-11-IH-1376.

⁷ 47 U.S.C. § 151 *et seq.*

- (j) “Investigation” means the investigation commenced by the Bureau in File No. EB-IHD-15-00018207 (formerly EB-11-IH-1376) regarding whether Intelsat violated the Satellite Queue Transfer Rule.
- (k) “NAL” means the Notice of Apparent Liability for Forfeiture issued to Intelsat on December 12, 2013, proposing a \$112,500 forfeiture for apparent violations of the Satellite Queue Transfer Rule.
- (l) “Operating Procedures” means the standard internal operating procedures and compliance policies established by Intelsat to implement the Compliance Plan.
- (m) “Parties” means Intelsat and the Bureau, each of which is a “Party.”
- (n) “Rules” means the Commission’s regulations found in Title 47 of the Code of Federal Regulations.
- (o) “Satellite Queue Transfer Rule” means Rule 25.158(c), which prohibits the transfer or assignment of a place in the queue established to process applications for GSO-like satellite licenses on a first-come, first-served basis.

II. BACKGROUND

3. Under Section 25.158 of the Rules, applications for GSO-like satellite system licenses are placed in a processing queue in the order in which they are filed.⁸ The Commission, through the International Bureau, then evaluates these applications in order, and grants them if they will not cause harmful interference to previously licensed satellites. To prevent speculation and misuse of this process, Section 25.158(c) of the Rules provides that an applicant is “not allowed to transfer, assign, or otherwise permit any other entity to assume its place in any queue.”⁹ This prohibition helps ensure that companies do not enter the queue in order to sell priority positions to legitimate applicants.¹⁰

4. In 2009, Intelsat applied for a license to operate a new satellite in the Ka-band. Later that year, Intelsat entered into an option agreement with another company, now known as ViaSat,¹¹ giving it an exclusive option to acquire Intelsat’s rights to operate a Ka-band satellite in the location for which Intelsat had applied for the license. ViaSat agreed to pay Intelsat a sum of money upon the exercise of the option. In February 2010, ViaSat exercised the option and applied for a license in that location. On March 2, 2010, Intelsat amended its application to remove itself from the queue, and ViaSat then became first in the queue.

5. Based on a referral from the International Bureau, the Enforcement Bureau commenced the Investigation in 2011. After extensive discussions with the Commission, Intelsat and ViaSat unwound their agreement. On October 18, 2012, Intelsat re-entered the queue, and on December 13, 2012, ViaSat removed itself. On December 12, 2013, the Commission issued the *NAL*, which found that Intelsat had apparently allowed the other company to assume its place in the queue, in violation of Section 25.158(c) of the Rules.¹²

⁸ 47 C.F.R. § 25.158(b).

⁹ 47 C.F.R. § 25.158(c).

¹⁰ See *Amendment of the Commission’s Space Station Licensing Rules and Policies*, First Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 10760, 10851, para. 242 (2003); see also *Application of DirecTV Enterprises, LLC to Amend Its Pending Application for a 17/24 GHz BSS Authorization at the 107° Orbital Location*, Memorandum Opinion and Order, 24 FCC Rcd 9408, 9412, para. 9 (Int. Bur. 2009).

¹¹ Intelsat originally entered the option agreement with WildBlue Communications, Inc. (WildBlue). Prior to exercising the option agreement, ViaSat acquired WildBlue.

¹² See *Intelsat License LLC*, 28 FCC Rcd 17183, 17187 para. 13 (2013). The *NAL* also found Intelsat apparently liable for violating Section 1.65(a) of the Rules, which requires that applicants maintain the completeness and accuracy of pending applications, by failing to inform the Commission about two substantial changes to its (continued....)

6. After the *NAL* was issued, Intelsat was granted an authorization from the Commission to operate the Ka-band satellite for which it had originally applied. Intelsat then surrendered its authorization in accordance with Commission procedures, and the authorization for a satellite to operate at the same location was granted to ViaSat in accordance with the Rules.

III. TERMS OF AGREEMENT

7. **Adopting Order.** The provisions of this Consent Decree shall be incorporated by the Bureau in an Adopting Order.

8. **Jurisdiction.** Intelsat agrees that the Bureau has jurisdiction over it and the matters contained in this Consent Decree and has the authority to enter into and adopt this Consent Decree.

9. **Effective Date; Violations.** The Parties agree that this Consent Decree shall become effective on the Effective Date as defined herein. As of the Effective Date, the Parties agree that this Consent Decree shall have the same force and effect as any other order of the Commission.

10. **Termination of Investigation.** In express reliance on the covenants and representations in this Consent Decree and to avoid further expenditure of public resources, the Bureau agrees to terminate the Investigation. In consideration for the termination of the Investigation, Intelsat agrees to the terms, conditions, and procedures contained herein. The Bureau further agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Intelsat concerning the matters that were the subject of the Investigation. The Bureau also agrees that, in the absence of new material evidence, it will not use the facts developed in the Investigation through the Effective Date, or the existence of this Consent Decree, to institute on its own motion any proceeding, formal or informal, or to set for hearing the question of Intelsat's basic qualifications to be a Commission licensee or hold Commission licenses or authorizations.¹³

11. **Admission of Liability.** Intelsat admits, solely for the purposes of this Consent Decree and for Commission civil enforcement purposes, and in express reliance on the provisions of paragraph 10 herein, that its March 2, 2010 amendment (which was withdrawn on October 18, 2012), was in furtherance of an agreement to transfer, assign, or otherwise permit assumption of a place in an application filing queue, actions prohibited by Section 25.158(c), as the Commission interpreted the rule in the *NAL*.

12. **Compliance Officer.** Within thirty (30) calendar days after the Effective Date, Intelsat shall designate a senior corporate manager with the requisite corporate and organizational authority to serve as a Compliance Officer and to discharge the duties set forth below. The person designated as the Compliance Officer shall be responsible for developing, implementing, and administering the Compliance Plan and ensuring that Intelsat complies with the terms and conditions of the Compliance Plan and this Consent Decree. In addition to the general knowledge of the Communications Laws necessary to discharge his or her duties under this Consent Decree, the Compliance Officer shall have specific knowledge of the Satellite Queue Transfer Rule prior to assuming his/her duties.

13. **Compliance Plan.** For purposes of settling the matters set forth herein, Intelsat agrees that it shall, within sixty (60) calendar days after the Effective Date, develop and implement a Compliance Plan designed to ensure future compliance with the Satellite Queue Transfer Rule and with the terms and conditions of this Consent Decree. Intelsat will implement, at a minimum, the following procedures:

(Continued from previous page) _____
application. *See id.* at 17188-89, paras. 15-19. The Commission declined to assess a penalty for this violation because it was outside the statute of limitations. *See id.* at 17190, para. 23.

¹³ *See* 47 C.F.R. 1.93(b).

- (a) **Operating Procedures.** Within thirty (30) calendar days after the Effective Date, Intelsat shall establish Operating Procedures that all Covered Employees must follow to help ensure Intelsat's compliance with the Satellite Queue Transfer Rule. Intelsat's Operating Procedures shall include internal procedures and policies specifically designed to ensure that employees know that arrangements such as the one between Intelsat and ViaSat that prompted the Investigation violate Section 25.158(c) of the Rules as interpreted by the Commission; and that a similar arrangement will not occur in the future. Intelsat shall also develop a Compliance Checklist that describes the steps that a Covered Employee must follow to ensure compliance with the Satellite Queue Transfer Rule.
- (b) **Compliance Manual.** Within sixty (60) calendar days after the Effective Date, the Compliance Officer shall develop and distribute a Compliance Manual to all Covered Employees. The Compliance Manual shall explain the Satellite Queue Transfer Rule and set forth the Operating Procedures that Covered Employees shall follow to help ensure Intelsat's compliance with the Satellite Queue Transfer Rule. Intelsat shall periodically review and revise the Compliance Manual as necessary to ensure that the information set forth therein remains current and accurate. Intelsat shall distribute any revisions to the Compliance Manual promptly to all Covered Employees.
- (c) **Compliance Training Program.** Intelsat shall establish and implement a Compliance Training Program on compliance with the Satellite Queue Transfer Rule and the Operating Procedures. As part of the Compliance Training Program, Covered Employees shall be advised of Intelsat's obligation to report any noncompliance with the Satellite Queue Transfer Rule under paragraph 14 of this Consent Decree and shall be instructed on how to disclose noncompliance to the Compliance Officer. All Covered Employees shall be trained pursuant to the Compliance Training Program within sixty (60) calendar days after the Effective Date, except that any person who becomes a Covered Employee at any time after the initial Compliance Training Program shall be trained within thirty (30) calendar days after the date such person becomes a Covered Employee. Intelsat shall repeat compliance training on an annual basis, and shall periodically review and revise the Compliance Training Program as necessary to ensure that it remains current and complete and to enhance its effectiveness.

14. **Reporting Noncompliance.** Intelsat shall report any noncompliance with the Satellite Queue Transfer Rule and with the terms and conditions of this Consent Decree within fifteen (15) calendar days after discovery of such noncompliance. Such reports shall include a detailed explanation of: (i) each instance of noncompliance; (ii) the steps that Intelsat has taken or will take to remedy such noncompliance; (iii) the schedule on which such remedial actions will be taken; and (iv) the steps that the Intelsat has taken or will take to prevent the recurrence of any such noncompliance. All reports of noncompliance shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Valerie Hill at Valerie.Hill@fcc.gov.

15. **Compliance Reports.** Intelsat shall file compliance reports with the Commission ninety (90) calendar days after the Effective Date, twelve (12) months after the Effective Date, twenty-four (24) months after the Effective Date, and thirty-six (36) months after the Effective Date.

- (a) Each Compliance Report shall include a detailed description of Intelsat's efforts during the relevant period to comply with the terms and conditions of this Consent Decree and the Satellite Queue Transfer Rule. In addition, each Compliance Report shall include a certification by the Compliance Officer, as an agent of and on behalf of Intelsat, stating that the Compliance Officer has personal knowledge that Intelsat:

(i) has established and implemented the Compliance Plan; (ii) has utilized the Operating Procedures since the implementation of the Compliance Plan; and (iii) is not aware of any instances of noncompliance with the terms and conditions of this Consent Decree, including the reporting obligations set forth in paragraph 14 of this Consent Decree.

- (b) The Compliance Officer's certification shall be accompanied by a statement explaining the basis for such certification and shall comply with Section 1.16 of the Rules and be subscribed to as true under penalty of perjury in substantially the form set forth therein.¹⁴
- (c) If the Compliance Officer cannot provide the requisite certification, the Compliance Officer, as an agent of and on behalf of Intelsat, shall provide the Commission with a detailed explanation of the reason(s) why and describe fully: (i) each instance of noncompliance; (ii) the steps that Intelsat has taken or will take to remedy such noncompliance, including the schedule on which proposed remedial actions will be taken; and (iii) the steps that Intelsat has taken or will take to prevent the recurrence of any such noncompliance, including the schedule on which such preventive action will be taken.
- (d) All Compliance Reports shall be submitted to Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554, with a copy submitted electronically to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Valerie Hill at Valerie.Hill@fcc.gov.

16. **Termination Date.** Unless stated otherwise, the requirements set forth in paragraphs 12 through 15 of this Consent Decree shall expire thirty-six (36) months after the Effective Date.

17. **Civil Penalty.** Intelsat will pay a civil penalty to the United States Treasury in the amount of twelve thousand dollars (\$12,000) within thirty (30) calendar days of the Effective Date. Intelsat shall send electronic notification of payment to Jeffrey J. Gee at Jeffrey.Gee@fcc.gov, Kalun Lee at Kalun.Lee@fcc.gov, and Valerie Hill at Valerie.Hill@fcc.gov on the date said payment is made. The payment must be made by check or similar instrument, wire transfer, or credit card, and must include the NAL/Account Number and FRN referenced above. Regardless of the form of payment, a completed FCC Form 159 (Remittance Advice) must be submitted.¹⁵ When completing the FCC Form 159, enter the NAL/Account Number in block number 23A (call sign/other ID) and enter the letters "FORF" in block number 24A (payment type code). Below are additional instructions that should be followed based on the form of payment selected:

- Payment by check or money order must be made payable to the order of the Federal Communications Commission. Such payments (along with the completed Form 159) must be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.
- Payment by wire transfer must be made to ABA Number 021030004, receiving bank TREAS/NYC, and Account Number 27000001. To complete the wire transfer and ensure appropriate crediting of the wired funds, a completed Form 159 must be faxed to U.S. Bank at (314) 418-4232 on the same business day the wire transfer is initiated.

¹⁴ 47 C.F.R. § 1.16.

¹⁵ An FCC Form 159 and detailed instructions for completing the form may be obtained at <http://www.fcc.gov/Forms/Form159/159.pdf>.

- Payment by credit card must be made by providing the required credit card information on FCC Form 159 and signing and dating the Form 159 to authorize the credit card payment. The completed Form 159 must then be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000, or sent via overnight mail to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101.

Questions regarding payment procedures should be addressed to the Financial Operations Group Help Desk by phone, 1-877-480-3201, or by e-mail, ARINQUIRIES@fcc.gov.

18. **Waivers.** As of the Effective Date, Intelsat waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Adopting Order. Intelsat shall retain the right to challenge Commission interpretation of the Consent Decree or any terms contained herein. If either Party (or the United States on behalf of the Commission) brings a judicial action to enforce the terms of the Consent Decree or the Adopting Order, neither Intelsat nor the Commission shall contest the validity of the Consent Decree or the Adopting Order, and Intelsat shall waive any statutory right to a trial *de novo*. Intelsat hereby agrees to waive any claims it may otherwise have under the Equal Access to Justice Act¹⁶ relating to the matters addressed in this Consent Decree.

19. **Severability.** The Parties agree that if any of the provisions of the Consent Decree shall be held unenforceable by any court of competent jurisdiction, such unenforceability shall not render unenforceable the entire Consent Decree, but rather the entire Consent Decree shall be construed as if not containing the particular unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.

20. **Invalidity.** In the event that this Consent Decree in its entirety is rendered invalid by any court of competent jurisdiction, it shall become null and void and may not be used in any manner in any legal proceeding.

21. **Subsequent Rule or Order.** The Parties agree that if any provision of the Consent Decree conflicts with any subsequent Rule or Order adopted by the Commission (except an Order specifically intended to revise the terms of this Consent Decree to which Intelsat does not expressly consent) that provision will be superseded by such Rule or Order.

22. **Successors and Assigns.** Intelsat agrees that the provisions of this Consent Decree shall be binding on its successors, assigns, and transferees.

23. **Final Settlement.** The Parties agree and acknowledge that this Consent Decree shall constitute a final settlement between the Parties with respect to the Investigation.

24. **Modifications.** This Consent Decree cannot be modified without the advance written consent of both Parties.

25. **Paragraph Headings.** The headings of the paragraphs in this Consent Decree are inserted for convenience only and are not intended to affect the meaning or interpretation of this Consent Decree.

26. **Authorized Representative.** Each Party represents and warrants to the other that it has full power and authority to enter into this Consent Decree. Each person signing this Consent Decree on behalf of a Party hereby represents that he or she is fully authorized by the Party to execute this Consent Decree and to bind the Party to its terms and conditions.

¹⁶ See 5 U.S.C. § 504; 47 C.F.R. §§ 1.1501–1.1530.

27. **Counterparts.** This Consent Decree may be signed in counterpart (including electronically or by facsimile). Each counterpart, when executed and delivered, shall be an original, and all of the counterparts together shall constitute one and the same fully executed instrument.

Travis LeBlanc
Chief
Enforcement Bureau

Date

Michelle Bryan
Secretary
Intelsat License LLC

Date